IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 390 of 1998

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
HARUN ADAM DOSANI - Opponent(s)

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Appearance :
MR AJ DESAI, APP, for Appellant(s) : 1,

MR SHAKEEL A QURESHI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order dated 17.3.1998 passed by the learned Judicial Magistrate, First Class, Mandvi, in Criminal Case No.578 of 1994, whereby the learned Judge has acquitted the respondents of the offences alleged against them.

2. The prosecution case, in short, is to the effect that on 21.8.1993 the respondents were caught with a revolver and cartridges without licence. Therefore, they were charged with offence under section 25(1) of the Arms Act.

3. The case was numbered as Criminal Case No.578 of 1994. After recording necessary evidence, the learned Magistrate acquitted the respondent of the offences with which he was charged. It is against the aforesaid judgement and order the present appeal has been filed.

4. Mr.A.J. Desai, learned APP, appearing for the State submitted that during police raid the respondent accused was found in possession of Revolver with six cartridges without having any licence and therefore they ought not to have been acquitted. He further submitted that the oral evidence of the raiding party fully supported the prosecution and therefore the learned Judge ought not to have acquitted the respodnents. He further submitted that the learned Judge has committed error in holding that no independent prosecution witnesses are examined though the same were available. He therefore submitted that the appeal requires to be allowed.

5. Mr. Qureshi, learned Advocate appearing for the respondent submitted that the learned Magistrate has considered all the aspects and evidence on record and did not find sufficient evidence to convict the respondent and therefore this Court may not interfere with the impugned judgement and order.

6. At the outset it is required to be noted that the scope and power of the appellate court to interfere in appeal

against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the

crime he is charged with.

7. I have heard learned Advocates for the respective parties. As a result of hearing and perusal of the record certain aspects are not disputed. The panch witness Andula (Exh.8) denied that he had gone with the police as a panch witness. He stated that he is not aware whether revolver was found from the accused or not. Even the panch witness Pachan Devraj (Exh.10) has also not supported the version of the prosecution. Thus, the prosecution was not able to prove that the revolver in question along with cartridges was recovered from the accused. The trial court has also found that no independent prosecution witnesses were examined by the prosecution though the same were available in a public place. It is also required to be noted the witnesses who are examined are from police staff and therefore such evidence alone would not be sufficient to convict the accused. The trial court has, therefore, come to the conclusion that it was not proved that the revolver in question was recovered from the possession of the accused. I am of the view that there is nothing on record

to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

8. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

[K.S. JHAVERI, J.]

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